

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
 CRIMINAL NO. 06-1436 LH
vs.)
)
)
DANIEL JESUS LEMOS,)
)
)
Defendant.)

**RESPONSE TO DEFENDANT'S MOTION
TO SET CONDITIONS OF RELEASE**

COMES NOW the United States of America, by and through its attorneys, Larry Gomez, Acting United States Attorney for the District of New Mexico, and Rumaldo Armijo, Executive Assistant United States Attorney for said District, and does hereby respond to Defendant's motion as follows:

1. Defendant was serving a state sentence and was brought from state custody to appear before this Court on February 16, 2007 pursuant to a Writ of Habeas Corpus Ad Prosequendum.
2. On February 16, 2007, the United States District Court entered an Order of Detention Pending Trial for the Defendant.
3. Pursuant to *U.S. v. Schrum*, 638 F.2d 214 (10th Cir. 1981), the Tenth Circuit has interpreted the Interstate Agreement and Detainers Act to require the dismissal of a federal indictment where a state prisoner was taken from state custody by federal authorities under Writ of Habeas Corpus Ad Prosequendum to appear for proceedings in a federal court but then returned to state custody before being tried on the federal charges.

4. Returning defendant to state custody while this case is pending would violate the "anti-shuttling" provisions of the Interstate Agreement on Detainers. *See Schrum, id.*

Therefore, the Government objects to the return of the defendant to state custody in light of these pending federal charges.

Respectfully submitted,

LARRY GOMEZ
Acting United States Attorney

Electronically filed March 6, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2007, I filed the foregoing electronically through the CM/ECF system, and a true and correct copy of the foregoing was mailed, postage prepaid, by depositing in the United States mail to defendant's attorney: Phillip Medrano, Assistant Federal Public Defender, 111 Lomas NW, Suite 501, Albuquerque, NM, 87102.

Filed electronically March 6, 2007

RUMALDO R. ARMIJO
Executive Assistant U.S. Attorney